

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TERRY LEE GARVIN, } NO. EDCV 15-656-AB (AGR)

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

ORDER ACCEPTING IN PART
FINDINGS AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other records on file herein, and the Report and Recommendation of the United States Magistrate Judge. Petitioner has not filed any Objections to the Report. The Court accepts in part the findings and recommendation of the Magistrate Judge, and agrees that the court has jurisdiction over the Petition and that Petitioner has not exhausted any of his claims.

However, after the magistrate judge issued a Report and Recommendation, the Ninth Circuit issued its decision in *Mena v. Long*, No. 14-55102, 2016 WL 625405 (9th Cir. Feb. 17, 2016). In *Mena*, the Circuit clarified that a district court has authority to stay habeas petitions that are wholly unexhausted

1 notwithstanding any "stray language" in *Rasberry v. Garcia*, 448 F.3d 1150 (9th
2 Cir. 2006). *Mena*, 2016 WL 625405, at 4 & n.3.

3 In light of *Mena*, Petitioner may file a motion for a stay of his federal habeas
4 petition under *Rhines v. Weber*, 544 U.S. 269 (2005). To obtain a stay under
5 *Rhines*, a petitioner must show that he had good cause for failing to exhaust
6 claims in the California Supreme Court, that his claims are "potentially
7 meritorious" and that he has not engaged in intentional delay tactics. *Id.* at
8 277-78. Petitioner should promptly initiate exhaustion proceedings in the state
9 court without waiting for a ruling from the court on his motion for a stay.
10 Petitioner may file a state habeas petition before the California Supreme Court
11 that contains the unexhausted grounds and explains why Petitioner failed to
12 present his claims previously.

13 If Petitioner wishes to seek a stay, Petitioner must file a motion for stay of
14 proceedings on or before **June 13, 2016**. If Petitioner does not timely file a
15 motion for stay of proceedings, the Petition will be dismissed without prejudice as
16 unexhausted.

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18 DATED: May 12, 2016

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ANDRÉ BIROTTE JR.
United States District Judge